



United States
**Office of
Personnel Management**

Office of the General Counsel
Washington, D.C. 20415-1300

In Reply Refer To:

Your Reference:

OPM File Number: S001842

August 11, 1998

Mr. William B. Menczer, Team Leader
Office of Policy Development
U.S. Department of Transportation
Federal Transit Administration
400 Seventh St., S.W.
Washington, D.C. 20590

Dear Mr. Menczer,

This letter is in response to your July 7, 1998 request for an advance decision whether agencies may develop programs that permit their employees to take advantage of recent changes to the tax code authorized by the Transportation Equity Act of 1998 (TEA), Pub. L. No. 105-178. For the reasons stated below, they may.

Pursuant to 5 U.S.C. § 7905(b), the head of an agency may establish programs to encourage employees to commute by means "other than single-occupancy motor vehicles." Although the statute gives several examples of the types of programs agencies may establish, it does not limit an agency head's discretion to approve any program reasonably related to the stated goal. Pursuant to this authority, some agencies use appropriated funds to provide a direct transit subsidy to employees. The TEA amends the tax code to permit employees to receive these and other types of so-called "qualified transportation fringe" benefits in lieu of salary. *See* Pub. L. No. 105-178, § 9010. The use of these types of benefits is consistent with the goal stated in 5 U.S.C. § 7905(b). Therefore, agencies may use appropriated funds to establish and operate programs that allow employees to elect to receive qualified transportation subsidies in lieu of salary. Whether an agency's particular program meets the requirements of the TEA, however, is a matter for the Internal Revenue Service, and not the Office of Personnel Management.

An employee's decision to receive the transportation fringe benefit will not affect the employee's basic rate of pay, which is the rate of pay fixed by law or by administrative action. 5 C.F.R. §550.103. Thus, to give some examples, an employee's rate of pay for purposes of overtime, lump-sum annual leave, and calculating an employee's retirement annuity would be based on the employee's rate of basic pay without regard to whether the employee elected to receive transportation fringe benefits.

If you have any questions regarding this response to your letter, please call me at 606-1700.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul Britner", is written over a horizontal line.

Paul Britner
Assistant General Counsel